715 Phil. 18

THIRD DIVISION

[G.R. No. 172846, July 24, 2013]

MANILA POLO CLUB EMPLOYEES' UNION (MPCEU) FUR-TUCP, PETITIONER, VS. MANILA POLO CLUB, INC., RESPONDENT.

D E C I S I O N

PERALTA, J.:

Challenged in this Petition for Review on *Certiorari* under Rule 45 of the 1997 Rules of Civil Procedure are the February 2, 2006 Decision[1] and May 29, 2006 Resolution[2] of the Court of Appeals (CA) in CA-G.R. SP No. 73127 affirming *in toto* the August 28, 2002 Decision[3] and September 13, 2002 Resolution[4] of Voluntary Arbitrator Jesus B. Diamonon (VA Diamonon), which dismissed the complaint for illegal retrenchment filed by petitioner.

The facts are uncomplicated.

Petitioner Manila Polo Club Employees Union (MPCEU), which is affiliated with the Federation of Unions of Rizal (FUR)-TUCP, is a legitimate labor organization duly registered with the Department of Labor and Employment (DOLE), while respondent Manila Polo Club, Inc. is a non-profit and proprietary membership organization which provides recreation and sports facilities to its proprietary members, their dependents, and guests.

On December 13, 2001, the Board of Directors of respondent unanimously resolved to completely terminate the entire operations of its Food and Beverage (F & B) outlets, except the Last Chukker, and award its operations to a qualified restaurant operator or caterer.[5] Cited as reasons were as follows:

> WHEREAS, the Food and Beverage (F & B) operations has resulted in yearly losses to the Club in six (6) out of the last eight (8) years with FY 2001 suffering the largest loss at P10,647,981 and that this loss is due mainly to the exceedingly high manpower cost and other management inefficiencies;
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> WHEREAS, due to the substantial losses incurred by the Club in both F&B operations and in its recurring operations, the Board and management had instituted cost and loss-cutting measures;
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> WHEREAS, the Board recognized the non-viability of the operations of the Food and Beverage Department and that its continued operations by the Club will result in substantial losses that will seriously impair the Club's financial health and membership satisfaction;

> WHEREAS, the Board recognized the urgent need to act and act decisively and eliminate factors contributing to substantial losses in the operations of the Club, more particularly the food and beverage operations. Thus, F & B operations are to cease wholly and totally, subject to observance and requirements of the law and other rules. x x x[6]

Subsequently, on March 22, 2002, respondent's Board[7] approved the implementation of the retrenchment program of employees who are directly and indirectly involved with the operations of the F & B outlets and authorized then General Manager Philippe D. Bartholomi to pay the employees' separation pay in accordance with the following scheme:

Length of Service (# Years)	Separation Pay (Php)
2 years of service and below	1 month pay
More than 2 years to 9 years of service	½ month pay for every year of service
At least 10 years of service	1 month pay for every year of service
At least 15 years of service	1.25 month(s) pay for every year of service
At least 20 years of service	1.5 month(s) pay for every year of service[8]

On even date, respondent sent notices to the petitioner and the affected employees (via registered mail) as well as submitted an Establishment Termination Report to the DOLE.[9] Respondent informed, among others, of the retrenchment of 123 employees[10] in the F & B Division and those whose functions are related to its operations; the discontinuance of the F & B operations effective March 25, 2002; the termination of the employment relationship on April 30, 2002; and, the continued payment of the employees' salaries despite the directive not to report to work effective immediately.

Unaware yet of the termination notice sent to them by respondent, the affected employees of petitioner were surprised when they were prevented from entering the Club premises as they reported for work on March 25, 2002. They later learned that the F & B operations of respondent had been awarded to Makati Skyline, Inc. effective that day. Treating the incident as respondent's way of terminating union members under the pretense of retrenchment to prevent losses, petitioner filed a Step II grievance and requested for an immediate meeting with the Management.[11] When the Management refused, petitioner filed a Notice of Strike before the National Conciliation and Mediation Board (NCMB) for illegal dismissal, violation/non-implementation of the Collective Bargaining Agreement (CBA), union busting, and other unfair labor practices (ULP).[12] In view of the position of respondent not to refer the issues to a voluntary arbitrator or to the Secretary of DOLE, petitioner withdrew the notice on April 9, 2002 and resolved to exhaust all remedies at the enterprise level.[13]

Later, on May 10, 2002, petitioner again filed a Notice of Strike, based on the same

grounds, when it sensed the brewing tension brought about by the CBA negotiation that was in the meantime taking place.[14] A month after, however, the parties agreed, among others, to maintain the existing provisions of the CBA (except those pertaining to wage increases and signing bonus) and to refer to the Voluntary Arbitrator the issue of retrenchment of 117 union members, with the qualification that *"[t]he retrenched employees subject of the VA will receive separation package without executing quitclaim and release, and without prejudice to the decision of the voluntary arbitrator."*[15]

On June 17, 2002, the parties agreed to submit before VA Diamonon the lone issue of whether the retrenchment of the 117 union members is legal.[16] Finding the pleadings submitted and the evidence adduced by the parties sufficient to arrive at a judicious determination of the issue raised, VA Diamonon resolved the case without the need of further hearings.

On August 28, 2002, VA Diamonon dismissed petitioner's complaint for lack of merit, but without prejudice to the payment of separation pay to the affected employees. In supporting his factual findings, the cases of *Catatista v. NLRC*,[17] *Dangan v. NLRC (2nd Div.), et al.*,[18] *Phil. Tobacco Flue-Curing & Redrying Corp. v. NLRC*,[19] *Special Events & Central Shipping Office Workers Union v. San Miguel Corp*,[20] and *San Miguel Corporation v. Ubaldo*[21] were relied upon. Petitioner's motion for reconsideration was likewise denied.

Upon an exhaustive examination of the evidence presented by the parties, the CA affirmed *in toto* the VA's Decision and denied the substantive aspects of petitioner's motion for reconsideration; hence, this petition.

We deny.

It is apparent from the records that this case involves a closure of business undertaking, not retrenchment. The legal requirements and consequences of these two authorized causes in the termination of employment are discernible. We distinguished, in *Alabang Country Club Inc. v. NLRC*:[22]

> x x x While retrenchment and closure of a business establishment or undertaking are often used interchangeably and are interrelated, they are actually two separate and independent authorized causes for termination of employment.
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> *Retrenchment is the reduction of personnel* for the purpose of cutting down on costs of operations in terms of salaries and wages resorted to by an employer because of losses in operation of a business occasioned by lack of work and considerable reduction in the volume of business.
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> *Closure of a business or undertaking* due to business losses is the reversal of fortune of the employer whereby there is a *complete cessation of business operations* to prevent further financial drain upon an employer who cannot pay anymore his employees since business has already stopped.

One of the prerogatives of management is the decision to close the entire establishment or to close or abolish a department or section thereof for economic reasons, such as to minimize expenses and reduce capitalization.

While the Labor Code provides for the payment of separation package in case of retrenchment to prevent losses, it does not obligate the employer for the payment thereof if there is closure of business due to serious losses.[23]

Likewise, the case of *Eastridge Golf Club, Inc. v. Eastridge Golf Club, Inc., Labor-Union, Super*[24] stressed the differences:

Retrenchment or lay-off is the termination of employment initiated by the employer, through no fault of the employees and without prejudice to the latter, during periods of business recession, industrial depression, or seasonal fluctuations, or during lulls occasioned by lack of orders, shortage of materials, conversion of the plant for a new production program or the introduction of new methods or more efficient machinery, or of automation. It is an exercise of management prerogative which the Court upholds if compliant with certain substantive and procedural requirements, namely:

1. That retrenchment is necessary to prevent losses and it is proven, by sufficient and convincing evidence such as the employer's financial statements audited by an independent and credible external auditor, that such losses are substantial and not merely flimsy and actual or reasonably imminent; and that retrenchment is the only effective measure to prevent such imminent losses;
2. That written notice is served on to the employees and the DOLE at least one (1) month prior to the intended date of retrenchment; and
3. That the retrenched employees receive separation pay equivalent to one (1) month pay or at least one-half (1/2) month pay for every year of service, whichever is higher.

The employer must prove compliance with all the foregoing requirements. Failure to prove the first requirement will render the retrenchment illegal and make the employer liable for the reinstatement of its employees and payment of full backwages. However, were the retrenchment undertaken by the employer is *bona fide,* the same will not be invalidated by the latter's failure to serve prior notice on the employees and the DOLE; the employer will only be liable in nominal damages, the reasonable rate of which the Court En Banc has set at P50,000.00 for each employee.

Closure or cessation of business is the complete or partial cessation of the operations and/or shut-down of the establishment of the employer. It

is carried out to either stave off the financial ruin or promote the business interest of the employer.

Unlike retrenchment, closure or cessation of business, as an authorized cause of termination of employment, need not depend for validity on evidence of actual or imminent reversal of the employer's fortune. Article 283 authorizes termination of employment due to business closure, regardless of the underlying reasons and motivations therefor, be it financial losses or not.[25]

To be precise, closure or cessation of an employer's business operations, whether in whole or in part, is governed by Article 283 of the Labor Code, as amended. It states:

Article 283.Closure of establishment and reduction of personnel. - The employer may also terminate the employment of any employee due to the installation of labor-saving devices, redundancy, retrenchment to prevent losses or the closing or cessation of operation of the establishment or undertaking unless the closing is for the purpose of circumventing the provisions of this Title, by serving a written notice on the workers and the Ministry of Labor and Employment at least one (1) month before the intended date thereof. In case of termination due to the installation of labor-saving devices or redundancy, the worker affected thereby shall be entitled to a separation pay equivalent to at least his one (1) month pay or to at least one (1) month pay for every year of service, whichever is higher. In case of retrenchment to prevent losses and in cases of closures or cessation of operations of establishment or undertaking not due to serious business losses or financial reverses, the separation pay shall be equivalent to one (1) month pay or at least one-half (1/2) month pay for every year of service, whichever is higher. A fraction of at least six (6) months shall be considered one (1) whole year.[26]

In *Industrial Timber Corporation v. Ababon*,[27] the Court explained the above-quoted provision in this wise:

A reading of the foregoing law shows that a partial or total closure or cessation of operations of establishment or undertaking may either be due to serious business losses or financial reverses or otherwise. Under the first kind, the employer must sufficiently and convincingly prove its allegation of substantial losses, while under the second kind, the employer can lawfully close shop anytime as long as cessation of or withdrawal from business operations was *bona fide* in character and not impelled by a motive to defeat or circumvent the tenurial rights of employees, and as long as he pays his employees their termination pay in the amount corresponding to their length of service. Just as no law forces anyone to go into business, no law can compel anybody to continue the same. It would be stretching the intent and spirit of the law